

**PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS AND DEEP-WATER PORTS)**

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**AUTHORITY:** 33 U.S.C. 2704; 33 U.S.C. 2716, 2716a; 42 U.S.C. 9608, 9609; Sec. 1512 of the Homeland Security Act of 2002, Public Law 107-296, Title XV, Nov. 25, 2002, 116 Stat. 2310 (6 U.S.C. 552(d)); E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 198; E.O. 12777, Sec. 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, 68 FR 10619, 3 CFR, 2004 Comp., p.166; Department of Homeland Security Delegation Nos. 0170.1 and 5110. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

**SOURCE:** USCG-2005-21780, 73 FR 53697, Sept. 17, 2008, unless otherwise noted.

**Subpart A—Financial Responsibility for Water Pollution (Vessels)**

**§ 138.10 Scope.**

This subpart sets forth the procedures by which an operator of a vessel must establish and maintain, for itself and for the owners and demise charterers of the vessel, evidence of financial responsibility required by Section 1016(a) of the Oil Pollution Act of 1990, as amended (OPA 90) (33 U.S.C. 2716), and Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. 9608), equal to the total applicable amount determined under this subpart and sufficient to cover their liability arising under—

- (a) Sections 1002 and 1004 of OPA 90 (33 U.S.C. 2702, 2704); and
- (b) Section 107 of CERCLA (42 U.S.C. 9607).

**§ 138.15 Applicability.**

(a) This subpart applies to the operator as defined herein of —

(1) A tank vessel of any size, and a foreign-flag vessel of any size, using the waters of the exclusive economic zone to transship or lighter oil (whether delivering or receiving) destined for a place subject to the jurisdiction of the United States; and

(2) Any vessel using the navigable waters of the United States or any port or other place subject to the jurisdiction of the United States, including a vessel using an offshore facility subject to the jurisdiction of the United States, except—

(i) A vessel that is 300 gross tons or less; or

(ii) A non-self-propelled barge that does not carry oil as cargo or fuel and does not carry hazardous substances as cargo.

(b) For the purposes of financial responsibility under OPA 90, a mobile offshore drilling unit is treated as a tank vessel when it is being used as an offshore facility and there is a discharge, or a substantial threat of a discharge, of oil on or above the surface of the water. A mobile offshore drilling unit is treated as a vessel other than a tank

vessel when it is not being used as an offshore facility.

(c) In addition to a non-self-propelled barge over 300 gross tons that carries hazardous substances as cargo, for the purposes of financial responsibility under CERCLA, this subpart applies to a self-propelled vessel over 300 gross tons, even if it does not carry hazardous substances.

(d) This subpart does not apply to operators of public vessels.

#### § 138.20 Definitions.

(a) As used in this subpart, the following terms have the meaning as set forth in—

(1) Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), respecting the financial responsibility referred to in § 138.10(a): *claim, claimant, damages, discharge, exclusive economic zone, liable, liability, navigable waters, mobile offshore drilling unit, natural resources, offshore facility, oil, owner or operator, person, remove, removal, removal costs, security interest, and United States*; and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), respecting the financial responsibility referred to in § 138.10(b): *claim, claimant, damages, environment, hazardous substance, liable, liability, navigable waters, natural resources, offshore facility, owner or operator, person, release, remove, removal, security interest, and United States*.

(b) As used in this subpart —

*Acts* means OPA 90 and CERCLA.

*Applicable amount* means an amount of financial responsibility that must be demonstrated under this subpart, determined under § 138.80(f)(1) for OPA 90 or § 138.80(f)(2) for CERCLA.

*Applicant* means an operator who has applied for a Certificate or for the renewal of a Certificate under this subpart.

*Application* means an Application for Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585), which can be obtained from the U.S. Coast Guard, National Pollution Funds Center as provided in §§ 138.40 and 138.45.

*Cargo* means goods or materials on board a vessel for purposes of transportation, whether proprietary or non-

proprietary. A hazardous substance or oil carried solely for use aboard the carrying vessel is not Cargo.

*CERCLA* means title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601-9675).

*Certificant* means an operator who has a current Certificate issued by the U.S. Coast Guard, National Pollution Funds Center (NPFC) under this subpart.

*Certificate* means a Vessel Certificate of Financial Responsibility (Water Pollution) (Form CG-5585) issued by the NPFC under this subpart, as provided in § 138.65.

*Day or days* means calendar days. If a deadline specified in this subpart falls on a weekend or Federal holiday, the deadline will occur on the next working day. Compliance with a submission deadline will be determined based on the day the submission is received by NPFC.

*Director, NPFC* means the head of the NPFC.

*E-COFR* means the Electronic Certificate of Financial Responsibility web-based process located on the NPFC Web site ( <https://npfc.uscg.mil/cofr/default.aspx>), which may be used by operators to apply for and renew Certificates.

*Financial guarantor* means a guarantor who provides a financial guaranty under § 138.80(b)(4), and is distinct from an insurer, a self-insurer or a surety.

*Financial responsibility* means the statutorily required financial ability to meet a responsible party's liability under the Acts.

*Fish tender vessel* and *fishing vessel* have the same meaning as set forth in 46 U.S.C. 2101.

*Fuel* means any oil or hazardous substance used or capable of being used to produce heat or power by burning, including power to operate equipment. A hand-carried pump with not more than five gallons of fuel capacity, that is neither integral to nor regularly stored aboard a non-self-propelled barge, is not equipment.

*Guarantor* means any person, other than a responsible party, who provides evidence of financial responsibility under the Acts on behalf of a vessel's